IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 676 OF 2007

Abdul Latif Abdul Hafeez Shaikh ..Petitioner

Vs.

Shagufta Naaz D/o Adam Khairadi
and anr. ..Respondents

Mr. M.I. Pathan for petitioner.
Mr. I.M. Khairadi for respondent no.1.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 01, 2007.

P.C.:

1. Heard Mr. Pathan the learned counsel for the petitioner and Mr. Khairadi the learned counsel for the respondent no.1. Mr. Adsule, the learned APP appears for the State.

2. The respondent no.1-wife had filed an application under Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 for one time maintenance and the said application came to be registered as Misc. Application No. 9 of 2005 before

the learned Judicial Magistrate, First Class at Solapur. The wife had claimed return of ornaments valued at Rs.1,36,000/-, Iddat period amount of Rs.4500/- and maintenance for future of Rs.10 lacs. This application was opposed by the petitioner-husband by filing his Written Statement. Evidence of the parties was recorded before the trial court and the wife's claim came to be allowed partly in terms of the following directions as per the judgment and order dated 31/8/2006:-

(a) Husband to pay Rs.1,60,000/- as fair and reasonable provision of maintenance to the applicant for her maintenance.

(b) Husband to deliver Dahej articles valued at Rs.34,381/- to the wife.

(c) Husband to pay Rs.11,000/- towards meher amount and Rs.4500/- towards maintenance for iddat period to the wife.

(d) Husband to pay Rs.1000/- to the wife

towards costs.

3. The order passed by the learned JMFC at Solapur is a subject matter of challenge in Criminal Revision Application No. 247 of 2006 and in the said revision application, the stay petition was filed at Exh.5. By way of interim order dated 23/3/2007 the learned Ad-hoc District Judge - 7, Solapur has been pleased to direct the husband to deposit an amount of Rs.80,000/- as a condition precedent to stay execution of the order impugned in the revision application. Hence, this petition.

4. Mr. Pathan submitted that the direction to deposit an amount of Rs.80,000/- is not fair and reasonable and the petitioner’s right to invoke the remedy of revision has been defeated. He also submitted that the petitioner’s financial condition does not permit him to deposit such a huge amount. There is no dispute that the petitioner-husband is working at Pune as a Technician in a Pathological Laboratory for the last few years and his employer was

in the witness box before the trial court and certified that the petitioner's salary was Rs.5000/- per month. The trial court did not accept the same figure and recorded a finding that the petitioner's salary could be presumed to be Rs.15000/- per month in view of the lief style he was living. It would not be necessary at this stage to go into the merits and demerits of the findings recorded by the trial court as they are pending the consideration by the revision court. On the point of deposit of Rs.80,000/-, it is clear that the same amount is 50% of the amount directed by the learned Magistrate to be paid to the wife by way of future maintenance. The factum of divorce between the parties is disputed and even the Written Statement filed by the husband does not emphatically state that the husband has given divorce as recognized under the Islamic tenets. The wife has been staying with her parents for last about more than two years. Having regards to these obtaining circumstances, I do not find any case made out to reduce the amount of deposit pending the revision application and, therefore, there is no case to cause interference with the interlocutory order passed by

the revision court. However, the revision should be heard and decided expeditiously.

5. Hence, the petition is rejected and it is directed that Criminal Revision Application No.247 of 2006 be heard and decided on its own merits as expeditiously as possible and preferably by 31st October, 2007.

(B.H. Marlapalle,J.)